

REMARKS

Favorable reconsideration is respectfully requested in view of the foregoing amendments and the following remarks.

I. CLAIM STATUS AND AMENDMENTS

Claims 1-27 were pending in this application when last examined.

Claims 7, 9-18 and 22 were examined on the merits and stand rejected.

Claims 1-6, 8, 19-21 and 23-27 were withdrawn as non-elected subject matter.

Applicants respectfully request rejoinder of claims 8 and 23 upon allowance of the elected claims. In particular, it is noted that claim 8 is drawn to claim 7 wherein there are three luciferase genes represented by SEQ ID NOs. 7, 10 and 11. Thus, if claim 7 is allowable, then claim 8 is also allowable. Further, it is noted that claim 23 is dependent on claim 14 and therefore this claim is allowable if claim 14 is allowable. Thus, rejoinder is requested for these claims as no further examination is necessary.

Claims 9-11, 13, 15-18 and 22 are cancelled without prejudice or disclaimer thereto. Applicants reserve the right to file a continuation or divisional application on any cancelled subject matter.

Claims 7, 8, 14 and 19 are amended to clarify the claimed invention.

No new matter has been added.

II. INDEFINITENESS REJECTIONS

On pages 2-4, claims 7, 9-18 and 22 were rejected under 35 U.S.C. § 112, second paragraph, as indefinite.

Claims 9-11, 13, 15-18 and 22 are cancelled and therefore the rejection of these claims is moot.

Claims 7, 8, 14 and 19 are amended. Therefore, this rejection is overcome for reasons which are self-evident.

III. WRITTEN DESCRIPTION/ENABLEMENT REJECTION

On pages 4-5, claims 7, 9-18 and 22 were rejected under 35 U.S.C. § 112, first paragraph, on the basis that the specification lacks written description support.

On pages 5-9, claims 7, 9-18 and 22 were rejected under 35 U.S.C. § 112, first paragraph, on the basis that the specification lacks enablement.

Claims 9-11, 13, 15-18 and 22 are cancelled and therefore the rejections of these claims are moot.

Claims 7, 8, 14 and 19 are amended to recite SEQ ID NOs. 7, 10 and 11. Therefore, these rejections are overcome for reasons which are self-evident.

IV. ANTICIPATION/OBVIOUSNESS REJECTION

On pages 11-12, claims 7, 10-15 and 22 were rejected under 35 U.S.C. § 102(e) as anticipated by Wood et al. (US 2008/0090291) as evidenced by Viviani et al. (US 7,276,363, copy enclosed).

On pages 12-14, claim 9 was rejected under 35 U.S.C. § 103(a) as obvious over Wood et al. in view of Viviani et al. (US 7,276,363).

On pages 14-15, claims 16-18 were rejected under 35 U.S.C. § 103(a) as obvious over Wood et al. as applied to claims 7, 10-15 and 22 or Wood et al. in view of Viviani et al. (US 7,276,363) or Viviani et al. ("Comparative aspects....") as applied to claim 9, and further in view of Zock et al. (US 2006/0265137).

Claims 9-11, 13, 15-18 and 22 are cancelled and therefore the rejections of these claims are moot.

Claims 7, 8, 14 and 19 are amended to recite SEQ ID NOs. 7, 10 and 11. It is noted that the Office does not contend that the above-cited references teach or suggest SEQ ID NOs. 7, 10 or 11 as required by the amended claims. Therefore, these rejections are overcome.

For the above-noted reasons, this rejection is untenable and should be withdrawn.

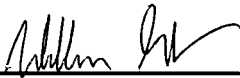
CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the present application is in condition for allowance and early notice to that effect is hereby requested.

If the Examiner has any comments or proposals for expediting prosecution, please contact the undersigned attorney at the telephone number below.

Respectfully submitted,

Yoshihiro OHMIYA et al.

By:  _____

William R. Schmidt, II
Registration No. 58,327
Attorney for Applicants

WRS/lc
Washington, D.C. 20006-1021
Telephone (202) 721-8200
Facsimile (202) 721-8250
January 21, 2009